106TH CONGRESS, 2d Session } HOUSE OF REPRESENTATIVES { REPT. 106–725, Part 1

WIRELESS TELECOMMUNICATIONS SOURCING AND PRIVACY ACT

JULY 11, 2000.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. BLILEY, from the Committee on Commerce, submitted the following

R E P O R T

[To accompany H.R. 3489]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 3489) to amend the Communications Act of 1934 to regulate interstate commerce in the use of mobile telephones and to strengthen and clarify prohibitions on electronic eavesdropping, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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79–006

AMENDMENT

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Wireless Telecommunications Sourcing and Privacy Act".

SEC. 2. FINDINGS.

The Congress finds the following:

(1) The provision of mobile telecommunications services is a matter of interstate commerce within the jurisdiction of the United States Congress under Article I, Section 8 of the United States Constitution. Certain aspects of mobile telecommunications technologies and services do not respect, and operate independently of, State and local jurisdictional boundaries.

(2) The mobility afforded to millions of American consumers by mobile telecommunications services helps to fuel the American economy, facilitate the development of the information superhighway and provide important safety benefits.

(3) Users of mobile telecommunications services can originate a call in one State or local jurisdiction and travel through other States or local jurisdictions during the course of the call. These circumstances make it more difficult to track the separate segments of a particular call with all of the States and local jurisdictions involved with the call. In addition, expanded home calling areas, bundled service offerings and other marketing advances make it increasingly difficult to assign each transaction to a specific taxing jurisdiction.

(4) State and local taxes imposed on mobile telecommunications services that are not consistently based can subject consumers, businesses and others engaged in interstate commerce to multiple, confusing and burdensome State and local taxes and result in higher costs to consumers and the industry.

(5) State and local taxes that are not consistently based can result in some telecommunications revenues inadvertently escaping State and local taxation altogether, thereby violating standards of tax fairness, creating inequities among competitors in the telecommunications market and depriving State and local governments of needed tax revenues.

(6) Because State and local tax laws and regulations of many jurisdictions were established before the proliferation of mobile telecommunications services, the application of these laws to the provision of mobile telecommunications services may produce conflicting or unintended tax results.

(7) State and local governments provide essential public services, including services that Congress encourages State and local governments to undertake in partnership with the Federal government for the achievement of important national policy goals.

(8) State and local governments provide services that support the flow of interstate commerce, including services that support the use and development of mobile telecommunications services.

(9) State governments as sovereign entities in our Federal system may require that interstate commerce conducted within their borders pay its fair share of tax to support the governmental services provided by those governments.

(10) Local governments as autonomous subdivisions of a State government may require that interstate commerce conducted within their borders pay its fair share of tax to support the governmental services provided by those governments.

(11) To balance the needs of interstate commerce and the mobile telecommunications industry with the legitimate role of State and local governments in our system of federalism, Congress needs to establish a uniform and coherent national policy regarding the taxation of mobile telecommunications services through the exercise of its constitutional authority to regulate interstate commerce.

(12) Congress also recognizes that the solution established by this legislation is a necessarily practical one and must provide for a system of State and local taxation of mobile telecommunications services that in the absence of this solution would not otherwise occur. To this extent, Congress exercises its power to provide a reasonable solution to otherwise insoluble problems of multi-jurisdictional commerce.

SEC. 3. AMENDMENT OF COMMUNICATIONS ACT OF 1934 TO PROVIDE RULES FOR DETERMINING STATE AND LOCAL GOVERNMENT TREATMENT OF CHARGES RELATED TO MOBILE TELECOMMUNICATIONS SERVICES.

(a) IN GENERAL.—The Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended by adding at the end thereof the following:

"TITLE VIII—STATE AND LOCAL TREATMENT OF CHARGES FOR MOBILE TELECOMMUNICATIONS SERVICES

"SEC. 801. APPLICATION OF TITLE.

"(a) IN GENERAL.—This title applies to any tax, charge, or fee levied by a taxing jurisdiction as a fixed charge for each customer or measured by gross amounts charged to customers for mobile telecommunications services, regardless of whether such tax, charge, or fee is imposed on the vendor or customer of the service and regardless of the terminology used to describe the tax, charge, or fee.

"(b) GENERAL EXCEPTIONS.—This title does not apply to—

"(1) any tax, charge, or fee levied upon or measured by the net income, capital stock, net worth, or property value of the provider of mobile telecommunications service;

"(2) any tax, charge, or fee that is applied to an equitably apportioned amount that is not determined on a transactional basis;

"(3) any tax, charge, or fee that represents compensation for a mobile telecommunications service provider's use of public rights of way or other public property, provided that such tax, charge, or fee is not levied by the taxing jurisdiction as a fixed charge for each customer or measured by gross amounts charged to customers for mobile telecommunication services;

"(4) any generally applicable business and occupation tax that is imposed by a State, is applied to gross receipts or gross proceeds, is the legal liability of the carrier, and statutorily allows the taxpayer to elect to use the sourcing method required in this Act; or

"(5) any fee related to obligations under section 254 of this Act.".

"(c) SPECIFIC EXCEPTIONS.—This title—

"(1) does not apply to the determination of the taxing situs of prepaid telephone calling services;

"(2) does not affect the taxability of either the initial sale of mobile telecommunications services or subsequent resale, whether as sales of the service alone or as a part of a bundled product, where the Internet Tax Freedom Act would preclude a taxing jurisdiction from subjecting the charges of the sale of these mobile telecommunications services to a tax, charge, or fee but this section provides no evidence of the intent of Congress with respect to the applicability of the Internet Tax Freedom Act to such charges; and

"(3) does not apply to the determination of the taxing situs of air-ground radiotelephone service as defined in section 22.99 of the Commission's regulations (47 C.F.R. 22.99).

"SEC. 802. SOURCING RULES.

"(a) IN GENERAL.—Notwithstanding the law of any State or political subdivision thereof to the contrary, mobile telecommunications services provided in a taxing jurisdiction to a customer, the charges for which are billed by or for the customer's home service provider, shall be deemed to be provided by the customer's home service provider.

"(b) JURISDICTION.—All charges for mobile telecommunications services that are deemed to be provided by the customer's home service provider under this title are authorized to be subjected to tax, charge, or fee by the taxing jurisdictions whose territorial limits encompass the customer's place of primary use, regardless of where the mobile telecommunication services originate, terminate or pass through, and no other taxing jurisdiction may impose taxes, charges, or fees on charges for such mobile telecommunications services.

"SEC. 803. LIMITATIONS.

"This title does not—

"(1) provide authority to a taxing jurisdiction to impose a tax, charge, or fee that the laws of the jurisdiction do not authorize the jurisdiction to impose; or

"(2) modify, impair, supersede, or authorize the modification, impairment, or supersession of, the law of any taxing jurisdiction pertaining to taxation except as expressly provided in this title.

"SEC. 804. ELECTRONIC DATABASES FOR NATIONWIDE STANDARD NUMERIC JURISDICTIONAL CODES.

"(a) ELECTRONIC DATABASE.—A State may provide an electronic database to a home service provider or, if a State does not provide such an electronic database to home service providers, then the designated database provider may provide an electronic database to a home service provider. The electronic database, whether provided by the State or the designated database provider, shall be provided in a format approved by the American National Standards Institute's Accredited Standards Committee X12, that, allowing for de minimis deviations, designates for each street address in the State, including to the extent practicable, any multiple postal street addresses applicable to one street location, the appropriate taxing jurisdictions, and the appropriate code for each taxing jurisdiction, for each level of taxing jurisdiction, identified by one nationwide standard numeric code. The electronic database shall also provide the appropriate code for each street address with respect to political subdivisions which are not taxing jurisdictions when reasonably needed to determine the proper taxing jurisdiction. The nationwide standard numeric codes shall contain the same number of numeric digits with each digit or combination of digits referring to the same level of taxing jurisdiction throughout the United States using a format similar to FIPS 55–3 or other appropriate standard approved by the Federation of Tax Administrators and the Multistate Tax Commission, or their successors. Each address shall be provided in standard postal format.

"(b) NOTICE; UPDATES.—A State or designated database provider that provides or maintains an electronic database described in subsection (a) shall provide notice of the availability of the then current electronic database, and any subsequent revisions thereof, by publication in the manner normally employed for the publication of informational tax, charge, or fee notices to taxpayers in that State.

"(c) USER HELD HARMLESS.—A home service provider using the data contained in the electronic database described in subsection (a) shall be held harmless from any tax, charge, or fee liability that otherwise would be due solely as a result of any error or omission in the electronic database provided by a State or designated database provider. The home service provider shall reflect changes made to the electronic database during a calendar quarter no later than 30 days after the end of that calendar quarter for each State that issues notice of the availability of an electronic database reflecting such changes under subsection (b).

"SEC. 805. PROCEDURE WHERE NO ELECTRONIC DATABASE PROVIDED.

"(a) IN GENERAL.—If neither a State nor designated database provider provides an electronic database under section 804, a home service provider shall be held harmless from any tax, charge, or fee liability in that State that otherwise would be due solely as a result of an assignment of a street address to an incorrect taxing jurisdiction if, subject to section 806, the home service provider employs an enhanced zip code to assign each street address to a specific taxing jurisdiction for each level of taxing jurisdiction and exercises due diligence at each level of taxing jurisdiction to ensure that each such street address is assigned to the correct taxing jurisdiction. Where an enhanced zip code overlaps boundaries of taxing jurisdictions of the same level, the home service provider must designate one specific jurisdiction within such enhanced zip code for use in taxing the activity for that enhanced zip code for each level of taxing jurisdiction. Any enhanced zip code assignment changed in accordance with section 806 is deemed to be in compliance with this section. For purposes of this section, there is a rebuttable presumption that a home service provider has exercised due diligence if such home service provider demonstrates that it has—

"(1) expended reasonable resources to implement and maintain an appropriately detailed electronic database of street address assignments to taxing jurisdictions;

"(2) implemented and maintained reasonable internal controls to promptly correct misassignments of street addresses to taxing jurisdictions; and

"(3) used all reasonably obtainable and usable data pertaining to municipal annexations, incorporations, reorganizations and any other changes in jurisdictional boundaries that materially affect the accuracy of the electronic database.

"(b) TERMINATION OF SAFE HARBOR.—Subsection (a) applies to a home service provider that is in compliance with the requirements of subsection (a), with respect to a State for which an electronic database is not provided under section 804 until the later of—

"(1) 18 months after the nationwide standard numeric code described in section 804(a) has been approved by the Federation of Tax Administrators and the Multistate Tax Commission; or

"(2) 6 months after that State or a designated database provider in that State provides the electronic database as prescribed in section 804(a).

"SEC. 806. CORRECTION OF ERRONEOUS DATA FOR PLACE OF PRIMARY USE.

"(a) IN GENERAL.—A taxing jurisdiction, or a State on behalf of any taxing jurisdiction or taxing jurisdictions within such State, may—

"(1) determine that the address used for purposes of determining the taxing jurisdictions to which taxes, charges, or fees for mobile telecommunications services are remitted does not meet the definition of place of primary use in section 809(3) and give binding notice to the home service provider to change the place of primary use on a prospective basis from the date of notice of determination if—

"(A) where the taxing jurisdiction making such determination is not a State, such taxing jurisdiction obtains the consent of all affected taxing jurisdictions within the State before giving such notice of determination; and

"(B) the customer is given an opportunity, prior to such notice of determination, to demonstrate in accordance with applicable State or local tax, charge, or fee administrative procedures that the address is the customer's place of primary use;

"(2) determine that the assignment of a taxing jurisdiction by a home service provider under section 805 does not reflect the correct taxing jurisdiction and give binding notice to the home service provider to change the assignment on a prospective basis from the date of notice of determination if—

"(A) where the taxing jurisdiction making such determination is not a State, such taxing jurisdiction obtains the consent of all affected taxing jurisdictions within the State before giving such notice of determination; and

"(B) the home service provider is given an opportunity to demonstrate in accordance with applicable State or local tax, charge, or fee administrative procedures that the assignment reflects the correct taxing jurisdiction.

"SEC. 807. DUTY OF HOME SERVICE PROVIDER REGARDING PLACE OF PRIMARY USE.

"(a) PLACE OF PRIMARY USE.—A home service provider is responsible for obtaining and maintaining the customer's place of primary use (as defined in section 809). Subject to section 806, and if the home service provider's reliance on information provided by its customer is in good faith, a home service provider—

"(1) may rely on the applicable residential or business street address supplied by the home service provider's customer; and

"(2) is not liable for any additional taxes, charges, or fees based on a different determination of the place of primary use for taxes, charges or fees that are customarily passed on to the customer as a separate itemized charge.

"(b) ADDRESS UNDER EXISTING AGREEMENTS.—Except as provided in section 806, a home service provider may treat the address used by the home service provider for tax purposes for any customer under a service contract or agreement in effect 2 years after the date of enactment of the Wireless Telecommunications Sourcing and Privacy Act as that customer's place of primary use for the remaining term of such service contract or agreement, excluding any extension or renewal of such service contract or agreement, for purposes of determining the taxing jurisdictions to which taxes, charges, or fees on charges for mobile telecommunications services are remitted.

"SEC. 808. SCOPE; SPECIAL RULES.

"(a) TITLE DOES NOT SUPERSEDE CUSTOMER'S LIABILITY TO TAXING JURISDICTION.—Nothing in this title modifies, impairs, supersedes, or authorizes the modification, impairment, or supersession of, any law allowing a taxing jurisdiction to collect a tax, charge, or fee from a customer that has failed to provide its place of primary use.

"(b) ADDITIONAL TAXABLE CHARGES.—If a taxing jurisdiction does not otherwise subject charges for mobile telecommunications services to taxation and if these charges are aggregated with and not separately stated from charges that are subject to taxation, then the charges for otherwise non-taxable mobile telecommunications services may be subject to taxation unless the home service provider can reasonably identify charges not subject to such tax, charge, or fee from its books and records that are kept in the regular course of business.

"(c) NON-TAXABLE CHARGES.—If a taxing jurisdiction does not subject charges for mobile telecommunications services to taxation, a customer may not rely upon the nontaxability of charges for mobile telecommunications services unless the customer's home service provider separately states the charges for non-taxable mobile telecommunications services from taxable charges or the home service provider elects, after receiving a written request from the customer in the form required by the provider, to provide verifiable data based upon the home service provider's books and records that are kept in the regular course of business that reasonably identifies the nontaxable charges.

"(d) REFERENCES TO REGULATIONS.—Any reference in this title to the Commission's regulations is a reference to those regulations as they were in effect on June 1, 1999.

"SEC. 809. DEFINITIONS.

"In this title:

"(1) CHARGES FOR MOBILE TELECOMMUNICATIONS SERVICES.—The term 'charges for mobile telecommunications services' means any charge for, or associated with, the provision of commercial mobile radio service, as defined in section 20.3 of the Commission's regulations (47 C.F.R. 20.3), or any charge for, or associated with, a service provided as an adjunct to a commercial mobile radio service, that is billed to the customer by or for the customer's home service provider regardless of whether individual transmissions originate or terminate within the licensed service area of the home service provider.

"(2) TAXING JURISDICTION.—The term 'taxing jurisdiction' means any of the several States, the District of Columbia, or any territory or possession of the United States, any municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or any other political subdivision within the territorial limits of the United States with the authority to impose a tax, charge, or fee.

"(3) PLACE OF PRIMARY USE.—The term 'place of primary use' means the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be—

"(A) either the residential street address or the primary business street address of the customer; and

"(B) within the licensed service area of the home service provider.

"(4) LICENSED SERVICE AREA.—The term 'licensed service area' means the geographic area in which the home service provider is authorized by law or contract to provide commercial mobile radio service to the customer.

"(5) HOME SERVICE PROVIDER.—The term 'home service provider' means the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services.

"(6) CUSTOMER.—

"(A) IN GENERAL.—The term 'customer' means—

"(i) the person or entity that contracts with the home service provider for mobile telecommunications services; or

"(ii) where the end user of mobile telecommunications services is not the contracting party, the end user of the mobile telecommunications service, but this clause applies only for the purpose of determining the place of primary use.

"(B) The term 'customer' does not include—

"(i) a reseller of mobile telecommunications service; or

"(ii) a serving carrier under an arrangement to serve the customer outside the home service provider's licensed service area.

"(7) DESIGNATED DATABASE PROVIDER.—The term "designated database provider" means a corporation, association, or other entity representing all the political subdivisions of a State that is—

"(A) responsible for providing the electronic database prescribed in section 804(a) if the State has not provided such electronic database; and

"(B) sanctioned by municipal and county associations or leagues of the State whose responsibility it would otherwise be to provide the electronic database prescribed by this title.

"(8) PREPAID TELEPHONE CALLING SERVICES.—The term 'prepaid telephone calling service' means the right to purchase exclusively telecommunications services that must be paid for in advance, that enables the origination of calls using an access number, authorization code, or both, whether manually or electronically dialed, if the remaining amount of units of service that have been prepaid is known by the provider of the prepaid service on a continuous basis.

"(9) RESELLER.—The term 'reseller'—

"(A) means a provider who purchases telecommunications services from another telecommunications service provider and then resells, uses as a component part of, or integrates the purchased services into a mobile telecommunications service; but

"(B) does not include a serving carrier with which a home service provider arranges for the services to its customers outside the home service provider's licensed service area.

"(10) SERVING CARRIER.—The term 'serving carrier' means a facilities-based carrier providing mobile telecommunications service to a customer outside a home service provider's or reseller's licensed service area.

"(11) MOBILE TELECOMMUNICATIONS SERVICE.—The term 'mobile telecommunications service' means commercial mobile radio service, as defined in section 20.3 of the Commission's regulations (47 C.F.R. 20.3).

"(12) ENHANCED ZIP CODE.—The term 'enhanced zip code' means a United States postal zip code of 9 or more digits.

"SEC. 810. COMMISSION NOT TO HAVE JURISDICTION OF TITLE.

"Notwithstanding any other provision of this Act, the Commission shall have no jurisdiction over the interpretation, implementation, or enforcement of this title.

"SEC. 811. NONSEVERABILITY.

"If a court of competent jurisdiction enters a final judgment on the merits that is no longer subject to appeal, which substantially limits or impairs the essential elements of this title based on Federal statutory or Federal Constitutional grounds, or which determines that this title violates the United States Constitution, then the provisions of this title are null and void and of no effect.

"SEC. 812. NO INFERENCE.

"(a) INTERNET TAX FREEDOM ACT.—Nothing in this title may be construed as bearing on Congressional intent in enacting the Internet Tax Freedom Act or as affecting that Act in any way.

"(b) TELECOMMUNICATIONS ACT OF 1996.—Nothing in this title shall limit or otherwise affect the implementation of the Telecommunications Act of 1996 or the amendments made by that Act.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies to customer bills issued after the first day of the first month beginning more than 2 years after the date of enactment of this Act.

SEC. 4. GAO DETERMINATION OF FCC REGULATORY FEES.

Within 180 days after the date of the enactment of this Act, the Comptroller General of the United States shall—

(1) conduct a review of the regulatory fees with respect to mobile telecommunications services that were collected during fiscal years 1998, 1999, and 2000 by the Federal Communications Commission to determine—

(A) whether such fees were assessed in accordance with section 9 of the Communications Act of 1934 (47 U.S.C. 159) and applicable public notices; and

(B) whether the Commission acquired information related to the assessment of such fees in a timely and accurate manner, and has maintained such information, that is sufficient to support the transactions; and

(2) submit a report to the Congress regarding such review and determinations.

SEC. 5. COMMERCE IN ELECTRONIC EAVESDROPPING DEVICES.

(a) PROHIBITION ON MODIFICATION.—Section 302(b) of the Communications Act of 1934 (47 U.S.C. 302a(b)) is amended by inserting before the period at the end thereof the following: ", or modify any such device, equipment, or system in any manner that causes such device, equipment, or system to fail to comply with such regulations".

(b) PROHIBITION ON COMMERCE IN SCANNING RECEIVERS.—Section 302(d) of such Act (47 U.S.C. 302a(d)) is amended to read as follows:

"(d) EQUIPMENT AUTHORIZATION REGULATIONS.—

"(1) PRIVACY PROTECTIONS REQUIRED.—The Commission shall prescribe regulations, and review and revise such regulations as necessary in response to subsequent changes in technology or behavior, denying equipment authorization (under part 15 of title 47, Code of Federal Regulations, or any other part of that title) for any scanning receiver that is capable of—

"(A) receiving transmissions in the frequencies that are allocated to the domestic cellular radio telecommunications service or the personal communications service;

"(B) readily being altered to receive transmissions in such frequencies;

"(C) being equipped with decoders that—

"(i) convert digital domestic cellular radio telecommunications service, personal communications service, or protected specialized mobile radio service transmissions to analog voice audio; or

"(ii) convert protected paging service transmissions to alphanumeric text; or

"(D) being equipped with devices that otherwise decode encrypted radio transmissions for the purposes of unauthorized interception.

"(2) PRIVACY PROTECTIONS FOR SHARED FREQUENCIES.—The Commission shall, with respect to scanning receivers capable of receiving transmissions in fre-

quencies that are used by commercial mobile services and that are shared by public safety users, examine methods, and may prescribe such regulations as may be necessary, to enhance the privacy of users of such frequencies.

"(3) TAMPERING PREVENTION.—In prescribing regulations pursuant to paragraph (1), the Commission shall consider defining 'capable of readily being altered' to require scanning receivers to be manufactured in a manner that effectively precludes alteration of equipment features and functions as necessary to prevent commerce in devices that may be used unlawfully to intercept or divulge radio communication.

"(4) WARNING LABELS.—In prescribing regulations under paragraph (1), the Commission shall consider requiring labels on scanning receivers warning of the prohibitions in Federal law on intentionally intercepting or divulging radio communications.

"(5) DEFINITIONS.—As used in this subsection, the term 'protected' means secured by an electronic method that is not published or disclosed except to authorized users, as further defined by Commission regulation.".

(c) IMPLEMENTING REGULATIONS.—Within 90 days after the date of enactment of this Act, the Federal Communications Commission shall prescribe amendments to its regulations for the purposes of implementing the amendments made by this section.

SEC. 6. UNAUTHORIZED INTERCEPTION OR PUBLICATION OF COMMUNICATIONS.

Section 705 of the Communications Act of 1934 (47 U.S.C. 605) is amended—

(1) in the heading of such section, by inserting "**INTERCEPTION OR**" after "**UNAUTHORIZED**";

(2) in the first sentence of subsection (a), by striking "Except as authorized by chapter 119, title 18, United States Code, no person" and inserting "No person";

(3) in the second sentence of subsection (a)—

(A) by inserting "intentionally" before "intercept"; and

(B) by striking "communication and divulge" and inserting "communication, and no person having intercepted such a communication shall intentionally divulge";

(4) in the fourth sentence of subsection (a)—

(A) by inserting "(A)" after "intercepted, shall"; and

(B) by striking "thereof) or" and inserting "thereof); or (B)";

(5) by striking the last sentence of subsection (a) and inserting the following: "Nothing in this subsection prohibits an interception or disclosure of a communication as authorized by chapter 119 of title 18, United States Code.";

(6) in subsection (e)(1)—

(A) by striking "fined not more than $2,000 or"; and

(B) by inserting "or fined under title 18, United States Code," after "6 months,";

(7) in subsection (e)(3), by striking "any violation" and inserting "any receipt, interception, divulgence, publication, or utilization of any communication in violation";

(8) in subsection (e)(4), by striking "any other activity prohibited by subsection (a)" and inserting "any receipt, interception, divulgence, publication, or utilization of any communication in violation of subsection (a)"; and

(9) by adding at the end of subsection (e) the following new paragraph:

"(7) Notwithstanding any other investigative or enforcement activities of any other Federal agency, the Commission shall investigate alleged violations of this section and may proceed to initiate action under section 503 of this Act to impose forfeiture penalties with respect to such violation upon conclusion of the Commission's investigation.".

PURPOSE AND SUMMARY

The purpose of the bill is to address three interrelated issues relevant to the provision of wireless services to the American people: taxation of wireless telephone calls by States and localities; regulatory fees paid by wireless telecommunications companies to the Federal Communications Commission; and the privacy protections afforded users of wireless telecommunications services. Together, these provisions affect the overall service that wireless telecommunications providers are able to offer consumers.

Section 3 provides a uniform national rule for determining the location from which mobile telecommunications services are provided in order to properly apply State and local taxes, charges, and fees. Section 4 establishes a GAO report to determine whether the FCC has correctly imposed fees on wireless providers. Section 5 and 6 enhance the privacy of users of cellular and other mobile communications services. The provisions in Section 5 and 6 are necessary to prohibit modification of currently available scanners and to prevent the development of a market for new digital scanners capable of intercepting digital communications.

BACKGROUND AND NEED FOR LEGISLATION

The growth of the wireless industry has been staggering over the last few years. Wireless subscribership has grown from approximately 20 million in 1994 to approximately 91 million today. In addition, revenues for the wireless carriers have grown three-fold over this time period, while the price per minute for wireless service has dropped substantially. The popularity of wireless services has increased pressure to resolve difficult public policy issues facing the industry, including the taxation of wireless telephone calls, the regulatory fees paid by wireless providers, and the privacy protections afforded wireless users.

Taxation of wireless telephone calls is a major problem facing wireless telephone subscribers, the wireless telecommunications industry, and the local taxing jurisdictions. Many States and localities (e.g., cities, counties, school districts) levy taxes on wireless service providers and/or the consumption of wireless services that occur within their respective jurisdiction. Beyond the many taxes that wireless service providers are subject to under State and local authority, many States and localities impose taxes or fees on wireless services used by end-users or consumers. These taxes or fees commonly have been referred to as transactional taxes. For instance, a locality may require a wireless telephone subscriber to pay an eight percent tax for the total wireless service "used" within its jurisdiction. In these circumstances, wireless service providers act on behalf of States and localities to collect the taxes from end-users. Usually, wireless service providers will provide a line-item on their bill indicating the State or locality imposed tax.

Transactional taxes require a determination of where the services are sold and purchased in order to apply the taxes applicable in the respective jurisdiction. Given the traditional network structure of wireless services and common practices of wireless telephone subscribers (e.g., "roaming"), many States and localities have used differing methodologies to determine where the services are sold and purchased and thus qualify for a tax. Some taxing jurisdictions impose taxes based on where the wireless call originated (originating cell site, tower or switch); others impose taxes based on where the call was terminated; and others impose taxes based on end-user or consumers' billing address.

Confusion over traditional tax policy increases the likelihood that multiple jurisdictions can claim authority to tax the same wireless transactions, while other transactions may be subject to no taxation. This makes it difficult for States and localities to enforce current law and often leads to extensive audits. Further, wireless service providers are forced to bill their subscribers based on these dif-

fering methodologies. This issue may become even more complex as the use of wireless service increases and new calling plans are developed to meet consumer need (e.g., flat rate calling plans vs. per minute fees). As new calling plans begin to develop using "buckets" of minutes (e.g., 500 minutes for $39.95) the ability to apportion the cost of each wireless call decreases and thus makes it more difficult to apply traditional transactional taxes.

The wireless privacy portions of the bill are an important component for wireless telephone customers. A large percentage of cellular services used today are still based on analog technology (but this is quickly changing). Analog communications are susceptible to unauthorized eavesdropping from scanners since voice signals, an analog form of communication, need not be decoded when intercepted over a scanner. During an oversight hearing on February 5, 1997, the Subcommittee on Telecommunications, Trade, and Consumer Protection saw a demonstration of how easily over-the-shelf scanners may be modified to enable them to intercept cellular communications. Digital cellular, the next generation of cellular services, and digital personal communications services (PCS) are less susceptible to unauthorized eavesdropping than analog cellular. PCS services are digital services that combine voice services with data (paging, messaging, caller identification) and possibly video services, over the same handset. While digital cellular and PCS are not immune from eavesdropping, they are currently more secure than analog cellular because the equipment for intercepting digital calls is vastly more expensive and complex than existing, off-the-shelf scanners that intercept analog communications (e.g., $200 vs. $10,000-$30,000). However, one of the purposes of the bill is to prevent a market from developing for less expensive digital scanners by clearly prohibiting the authorization of such scanners by the FCC.

Several existing statutes are intended to protect cellular users' privacy. Section 705(a) of the Communications Act of 1934 prohibits the unauthorized interception and divulgence of radio communications, including cellular calls. This statute is not limited by its terms to analog radio communications and, therefore, applies to digital cellular and PCS, as well as to other commercial mobile radio services such as paging, specialized mobile services, messaging services, etc. FCC rules also prohibit the interception of private conversations by radio scanners, whether or not the content of such radio communications is divulged (47 C.F.R. § 15.9).

Section 705(e)(4) of the Communications Act makes it illegal for a person, knowing or having reason to know that equipment is intended for the unauthorized interception and divulgence of radio communications, to manufacture, assemble, modify, import, export, sell, or distribute that equipment. However, the FCC has only enforced this provision for satellite cable piracy. In addition to these provisions of the Communications Act and FCC regulations, the Electronic Communications Protection Act, (18 U.S.C. § 2511 et seq. (1986) (ECPA)), also prohibits the unauthorized interception or disclosure of cellular and other radio communications. Under ECPA, the manufacture, assembly, possession, sale or use of scanning devices which are "primarily useful" for surreptitious interception and are sent through interstate mail are prohibited. ECPA is the principal statute used to prosecute unlawful interceptions. ECPA

prohibits knowingly advertising interstate for any device "primarily useful" for the surreptitious interception of electronic communications. See section 2512(1)(c).

While interception of cellular telephone calls is illegal, it is legal under existing statutes to intercept radio communications outside of the cellular bands as long as the communication is not divulged or does not "benefit" the interceptor. For example, people may intercept public safety communications on emergencies occurring in their vicinity. Typically, these communications can be intercepted by an off-the-shelf scanner. Prior to passage of the Telephone Disclosure and Dispute Resolution Act (TDDRA) (P.L. 102–556; 47 U.S.C. § 302(a)), which codified existing section 302 of the Communications Act of 1934, over 22 brands of scanners were capable of intercepting the cellular bands. TDDRA was designed, in part, to decrease the manufacture and availability of scanning devices capable of intercepting cellular communications. Under TDDRA, manufacturers are prohibited from manufacturing scanners that can be "readily altered" to intercept cellular communications. FCC Rule 15.121 defines "readily altered." Specifically, existing section 302(b) of the Communications Act of 1934 prohibits the manufacture, import, or sale of scanning devices that are capable of intercepting cellular calls, or of being "readily altered" for such interception. In section 302(d), Congress required the FCC to promulgate regulations denying authorization to scanners that are capable of receiving cellular transmissions. See 47 C.F.R. §§ 15.121 and 15.37(f). The Committee finds that current scanning receivers are not being manufactured in a manner to effectively prohibit interception of these frequencies and the current law does not apply to new technologies.

HEARINGS

The Subcommittee on Telecommunications, Trade, and Consumer Protection held a legislative hearing on H.R. 3489, the Wireless Telecommunications Sourcing and Privacy Act on April 6, 2000. The Subcommittee received testimony from: Tom Wheeler, President and CEO, Cellular Telecommunications Industry Association; Dan R. Bucks, Executive Director, Multistate Tax Commission; Frank Shafroth, Director, Office of State Federal Relations, National Governors' Association (NGA); and Joseph E. Brooks, Councilman, City of Richmond, representing the National League of Cities.

COMMITTEE CONSIDERATION

On May 10, 2000, the Subcommittee on Telecommunications, Trade, and Consumer Protection met in open markup session and approved H.R. 3489, the Wireless Telecommunications Sourcing and Privacy Act, for Full Committee consideration, with an amendment, by unanimous consent. On May 17, 2000, the Full Committee met in open markup session, and ordered H.R. 3489 reported, as amended by the Subcommittee on Telecommunications, Trade, and Consumer Protection, by a voice vote.

COMMITTEE VOTES

Clause 3(b) of Rule XIII of the Rules of the House requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken in connection with ordering H.R. 3489, the Wireless Telecommunications Sourcing and Privacy Act, reported. A motion by Mr. Bliley to order H.R. 3489 reported to the House, with an amendment, was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of Rule XIII of the Rules of the House of Representatives, the Committee held a legislative hearing and made findings that are reflected in this report.

COMMITTEE ON GOVERNMENT REFORM OVERSIGHT FINDINGS

Pursuant to clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of Rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 3489, the Wireless Privacy Enhancement Act of 1999, results in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of Rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 22, 2000.

Hon. TOM BLILEY,
Chairman, Committee on Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3489, the Wireless Telecommunications Sourcing and Privacy Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Hadley (for federal costs), Hester Grippando (for revenues), Theresa Gullo (for the

state and local impact), and Jean Wooster (for the private-sector impact).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

H.R. 3489—Wireless Telecommunications Sourcing and Privacy Act

Summary: CBO estimates that enactment of H.R. 3489 would have a negligible effect on the federal budget. The bill contains both an intergovernmental mandate and a private-sector mandate, as defined by the Unfunded Mandates Reform Act (UMRA). CBO estimates that the costs of these mandates would fall below the thresholds established by UMRA.

Two years after enactment, H.R. 3489 would prohibit state and local governments from taxing mobile telecommunications calls unless a customer's place of primary telephone use is within the taxing jurisdiction of the state or local government. In addition, H.R. 3489 would amend the Communications Act of 1934 to prohibit modifying any equipment used to communicate electronically in any manner that would not comply with regulations affecting electronic eavesdropping. Finally, the bill would require the General Accounting Office to issue a report on regulatory fees collected by the Federal Communications Commission (FCC) for mobile telecommunications services during fiscal years 1998 through 2000.

Certain charges imposed on telecommunications services either by states or the federal government under the Telecommunications Act of 1996 to support universal service are recorded in the federal budget as receipts and direct spending. (Universal Service is a program intended to promote the availability of telecommunications services at affordable rates.) Although enactment of H.R. 3489 could affect these charges, CBO estimates any changes would not be significant. In addition, the bill would impose criminal penalties for intercepting, publishing, or divulging a communication that is not authorized. Because H.R. 3489 could affect direct spending and receipts, pay-as-you-go procedures would apply, but CBO estimates that any such effects would be negligible. CBO estimates that net discretionary costs to the FCC to implement the provisions of this bill also would be negligible.

H.R. 3489 contains an intergovernmental mandate as defined in UMRA, because it would preempt state and local government laws by prohibiting jurisdictions from taxing mobile telecommunication services unless the jurisdictions contain a customer's place of primary use. While data are limited, CBO estimates the mandate would not impose significant net costs on state or local governments and would not exceed the threshold established in UMRA ($55 million in 2000, adjusted annually for inflation).

H.R. 3489 would impose a new private-sector mandate, as defined in UMRA, on manufacturers, importers, sellers, and those who modify scanning receivers. The direct cost of the mandate would be well below the annual threshold established in UMRA for private-sector mandates ($109 million in 2000, adjusted for inflation).

Estimated cost to the Federal Government: Under the Universal Service Fund established by the Telecommunications Act of 1996, the FCC seeks to provide universal access to telecommunications

services through various charges to some telephone companies and payments to others. The 1996 act also permits states to establish additional collections and payments to preserve and advance universal service, so long as these mechanisms are not inconsistent with federal law.

The Universal Service Fund records these transactions on the federal budget as governmental receipts and direct spending. To the extent that states choose to use charges on mobile telecommunications service to support universal service, H.R. 3489 could result in reduced revenues collected and lower direct spending. But based on information from the FCC and the Universal Service Administrative Company, CBO estimates that any change in revenues and direct spending as a result of enacting this legislation would be negligible.

H.R. 3489 would amend the Communications Act of 1934 to prohibit modifying any equipment used to communicate electronically in any manner that would not comply with regulations affecting electronic eavesdropping. The bill would direct the FCC to prepare regulations to deny the authorization to use FCC equipment for certain scanning receivers that may be capable of unauthorized interception of communication transmissions. Based on information from the FCC, CBO estimates that these regulations would cost less than $500,000 to promulgate, assuming availability of appropriated funds.

The bill also would amend the Communications Act of 1934 to impose criminal penalties for intercepting, publishing, or divulging a communication that is not authorized; consequently, the federal government might collect additional fees if H.R. 3489 is enacted. Collections of such fees are recorded in the budget as governmental receipts (revenues), which are deposited in the Crime Victims Fund and spent in subsequent years. CBO estimates that any additional receipts and direct spending that would occur under this bill would be negligible. Under current law, any enforcement costs that the agency incurs are offset by fees charged to the industries that the FCC regulates. As a result, we estimate that this provision would not result in any significant net cost to the federal government.

CBO estimates that the other provisions of the bill would have no significant budgetary impact. The costs of this legislation fall within budget function 370 (commerce and housing credit).

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. As noted above, H.R. 3489 could affect direct spending and receipts, but CBO estimates that any such effects would be negligible.

Estimated impact on State, local, and tribal governments: H.R. 3489 would preempt state and local government laws by prohibiting jurisdictions from taxing mobile telecommunications services unless the jurisdictions contain a customer's place of primary use. Such a preemption would be a mandate as defined in UMRA. This change could initially benefit some taxing jurisdictions and harm others depending on the number of customers with places of primary use within each jurisdiction. The bill would not require or prohibit state and local governments from taxing telecommunications services or affect the rate at which such services could be

taxed. It would, however, require a uniform basis for determining which jurisdictions may tax mobile telecommunications services.

Because the current system of taxing mobile telecommunications services is very complex, it is unclear what effect this change may have on revenues from such taxes. Based on information from groups representing the affected state and local governments, however, CBO estimates that the bill would, in total, be approximately revenue neutral across the country, although the distribution of revenues among jurisdictions would likely change.

Estimated impact on the private sector: H.R. 3489 would impose a new private-sector mandate, as defined in UMRA, on manufacturers, importers, sellers, and those who modify scanning receivers. Section 5 of the bill would expand the FCC's criteria for certifying equipment before it can be imported or marketed. Based on information provided by the leading manufacturer of scanning receivers and the FCC, CBO estimates that the direct cost of complying with H.R. 3489 would fall well below the statutory threshold for private-sector mandates ($109 million in 2000, adjusted annually for inflation).

Previous CBO estimates: On May 9, 2000, CBO transmitted a cost estimate of S. 1755, the Mobile Telecommunications Sourcing Act, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on April 13, 2000. S. 1755 is nearly identical to the provisions of H.R. 3489 that concern state taxation of mobile telephone services, and our cost estimates are the same for these provisions.

On February 22, 1999, CBO transmitted a cost estimate of H.R. 514, the Wireless Privacy Enhancement Act of 1999, as ordered reported by the House Committee on Commerce on February 11, 1999. H.R. 514 is nearly identical to the provisions of H.R. 3489 that concern electronic eavesdropping, and our cost estimates are the same for these provisions.

Estimate prepared by: Federal Costs: Mark Hadley; revenues: Hester Grippando; impact on State, Local, and Tribal Governments: Theresa Gullo; and impact on the Private Sector: Jean Wooster.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of Rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Sec. 1. Short title

Section 1 designates the short title of the bill as the "Wireless Telecommunications Sourcing and Privacy Act."

Sec. 2. Findings

Section 2 enumerates Congressional findings for the bill.

Sec. 3. Amendment of Communications Act of 1934 to provide rules for determining State and local government treatment of charges related to mobile telecommunications services

Over the last few years, the relevant parties have been working together in an effort to design a new uniform mechanism to impose transactional taxes on wireless services. The Cellular Telecommunications Industry Association (CTIA), on behalf of the wireless industry, and a number of individual wireless companies have been working with the Multistate Tax Commission, the National Governors Association (NGA), the Federation of Tax Administrators, and the National League of Cities to develop a mechanism to simplify the transactional taxes imposed on wireless services. Last year, the parties agreed on approach and presented it to Congress with the goal of enacting it into law. The contents of that agreement are included in section 3 of H.R. 3489. The approach is an effort to move away from a strict transactional tax that requires a determination of the sale and purchase of the wireless service and replace it with one address that will serve as the point for taxing wireless services. This effort is intended to reduce the possibility of extensive litigation and bring simplicity to the current taxing schemes.

Section 3(a) adds a new title VIII to the Communications Act: "State and Local Treatment of Charges for Mobile Telecommunications Services."

Section 801(a) provides that the legislation applies to any tax, charge, or fee imposed by any taxing authority as a fixed charge for each customer or measured by gross amounts charged to customers for mobile telecommunications services. The legal imposition of the tax, charge, or fee does not matter.

Section 801(b) identifies general taxes that are not subject to the provisions of the title. Taxes excluded from the title include, among others, income taxes and taxes assessed on an equitably apportioned amount that is not determined on a transactional basis.

Section 801(c)(1) provides that the title does not apply to the determination of the taxing situs of prepaid telephone calling services.

Section 801(c)(2) provides that the title does not affect the taxability of either the initial sale or subsequent resale of mobile services where the Internet Tax Freedom Act (title XI of P.L. 105–277)

would preclude a taxing jurisdiction from imposing a tax, charge, or fee on such mobile telecommunications services.

Section 801(c)(3) provides that the title does not apply to air-ground radiotelephone services as defined in 47 C.F.R. § 22.99 as of June 1, 1999.

Section 802 provides that mobile telecommunications services can only be subjected to a tax, charge, or fee by the taxing jurisdictions whose territorial limits encompass the customer's place of primary use, regardless of where the mobile telecommunications services originate, terminate, or pass through. The rule only applies to charges for mobile telecommunications services for which charges are billed by or for the home service provider with which the customer contracts. This section authorizes States and localities to impose taxes based upon the place of primary use and prohibits them from imposing taxes on mobile telecommunications services on any other basis.

Section 803 clarifies that the title does not give taxing jurisdictions any authority that they do not already possess to impose a tax, charge, or fee. This section also clarifies that the title does not modify, impair, or supersede any current authority possessed by State and local taxing jurisdictions except as expressly provided by this title.

Section 804 establishes a mechanism through which home service providers can determine the appropriate taxing authorities for a customer's place of primary use. It allows the States to provide home service providers with an electronic database containing such information in a uniform format. The database will match street addresses (in standard postal format) within the State to the applicable taxing jurisdictions. Section 804 also permits a designated database provider to provide an electronic database if a State does not provide such a database.

Section 804 also provides that a home service provider that relies on the information contained in an electronic database will be held harmless from any tax, charge, or fee that otherwise would be due solely as a result of an error or omission in the database.

Section 805 provides that a home service provider is held harmless from any tax, charge, or fee that would otherwise be due if the database described in section 804 does not exist in a State and the home service provider uses an enhanced zip code to determine the taxing jurisdictions associated with a customer's place of primary use. A home service provider must exercise due diligence when assigning taxing jurisdictions using the enhanced zip code method for the provisions of this section to apply. Additional requirements are set forth in the section regarding the use of the enhanced zip code method.

Section 806 provides that a taxing jurisdiction under specified procedures can require a home service provider to change prospectively the customer's place of primary use or require the home service provider to change prospectively the applicable taxing jurisdiction(s) assigned to a customer's place of primary use.

Section 807(a) establishes that a home service provider has the principal responsibility for obtaining and maintaining a customer's place of primary use. A home service provider may rely on information provided by the customer if such reliance is made in good faith. Section 807(a) also provides that, with respect to taxes cus-

tomarily itemized and passed through on the customer's bills, the home service provider is not generally responsible for taxes subsequently determined to have been sourced in error.

Section 807(b) provides that, in the case of a contract existing prior to the effective date of the Act, a home service provider may rely on its previous determination of the applicable taxing jurisdiction(s) for the remainder of the contract, excluding extensions or renewals of the contract.

Section 808(a) provides that the title does not modify, impair, or supersede any law that authorizes a State or local taxing jurisdiction to collect a tax, charge, or fee from a customer who has failed to provide its place of primary use.

Section 808(b) states that a home service provider must treat charges that reflect a bundled product, only part of which is taxable, as fully taxable, unless reasonable identification of the nontaxable charges is possible from the home service provider's business records kept in the regular course of business.

Section 808(c) limits non-taxability of mobile telecommunications services in a jurisdiction where mobile telecommunications services are not taxable. A customer must treat charges as taxable unless the home service provider separately states the non-taxable charges or provides verifiable data from its business records kept in the regular course of business that reasonably identifies the nontaxable charges.

Section 809 provides definitions specific to the title.

Section 809(3) defines "place of primary use" as the customer's business or residential street address in the licensed service are of the home service provider. Place of primary use is used to determine the taxing jurisdiction(s) that may tax the provision of mobile telecommunications services. If a home service provider has a national or regional service area, the place of primary use is still limited to the customer's business or residential street address within that larger service area.

Section 809(6) defines "customer." Under a special rule, customers include employees (the end users) of businesses that contract for mobile telecommunications services. Customers do not include (i) resellers or (ii) a serving carrier providing wireless services for a customer who is outside the customer's home service provider's licensed service area.

Section 809(9) defines "reseller." A reseller does not include a serving carrier providing mobile telecommunications services for a customer who is outside the customer's home service provider's licensed service area.

Section 810 provides that the FCC has no jurisdiction over the interpretation, implementation, or enforcement of this title.

Section 811 provides for nonseverability in the event of a judicial determination that the title is unconstitutional or otherwise substantially impaired from accomplishing its objective.

Section 812(a) provides that nothing in the title is intended to reflect upon the intent of Congress in enacting the Internet Tax Freedom Act.

Section 812(b) provides that nothing in the title impacts the implementation of the Telecommunications Act of 1996 or the amendments made by that Act.

Section 3(b) establishes an effective date of the first day of the first month beginning more than two years after enactment. The transitional delay allows both business and tax administrators to gear up for a change in their existing systems, including the possible use of the database authorized by section 804.

Sec. 4. GAO determination of FCC regulatory fees

Section 4 requires the General Accounting Office (GAO), within 180 days after the date of enactment, to conduct a review of regulatory fees paid by wireless telecommunications providers for fiscal years 1998, 1999, and 2000. In conducting the review, GAO is required to determine whether such fees were assessed in accordance with section 9 of the Communications Act. GAO would be required to determine whether the FCC acquired information related to the assessment of such fees in a timely and accurate manner, and has maintained such information. Finally, section 4 requires GAO to submit its findings in a report to Congress.

The Committee is concerned that the FCC has not properly assessed fees on wireless telecommunications providers as required by section 9. The GAO report is designed to determine the exact mechanism the FCC used to assess fees for fiscal year 1998 until present and determine whether the fees collected were accurate to meet the statutory requirements. This analysis is intended to provide an in-depth examination of the underlying information that the FCC used to calculate these fees to ensure that it was and is accurate. Improperly allocating the cost of fees on wireless telecommunications providers has a direct impact on the revenues of wireless telecommunications providers and thus on the rates that they are able to offer consumers. Further, the FCC is obligated to correctly allocate fees under section 9 to prevent one industry segment from paying too much, while other industry segments pay too little. The information provided by the GAO should be helpful in determining whether corrective action is necessary.

Sec. 5. Commerce in electronic eavesdropping devices

Section 5(a) extends the prohibition in section 302(b) of the Communications Act of 1934 to "modifying" scanning devices. While the Committee believes that "modifying" is already covered by the prohibition against "manufacturing" non-compliant scanners, this provision makes the prohibition explicit to prevent any misreading of the statute. The Committee does not intend to prohibit amateurs from modifying linear amplifiers after purchase, as permitted by Commission rules, to allow the devices to operate in the amateur 12-meter and 10-meter bands. Nor does the Committee intend that section 5(a) prohibit amateurs from building or modifying one amplifier per year to enable this capability, as also permitted by Commission rules. Likewise, the Committee does not intend that this section be interpreted in a manner that permits the Commission to take actions against an amateur operator who is operating within the terms of his or her license.

Finally, the Committee does not intend that section 5(a) be interpreted in a manner that discourages manufacturers or dealers of amateur equipment from providing amateur licensees with information about permissible modifications of transceivers to enable them to transmit and receive on Military Affiliate Radio Service

and the Civil Air Patrol, to the extent such transmission and reception is permissible under 18 U.S.C. §2511(g) or other statutes. The Committee expects that the new regulations required under section 5 will preserve the ability of amateurs to modify transceivers for the legitimate purposes discussed above.

Section 5(b) makes amendments to section 302(d) of the Communications Act of 1934. Section 5(b) amends paragraph 302(d)(1) to expand its scope to cover new communications technologies such as personal communications services and protected specialized mobile radio and paging services. It also requires that the Commission deny equipment authorization to scanners that are capable of being equipped with certain decoders. While the Committee does not intend to hamper the inclusion of consumer-friendly features on radio scanners such as external audio jacks, manufacturers should design scanners with ports that the manufacturer does not anticipate can be used: (1) to equip the scanner with a decoder that can convert digital cellular, personal communications services, or protected specialized mobile radio services to analog voice audio; (2) to convert protected paging services to alphanumeric text; or (3) to otherwise decrypt radio transmissions for the purposes of unauthorized interception. Thus, after the enactment of this provision, manufacturers will be under an obligation to design scanners with features that the manufacturer does not anticipate can be used to equip such scanners with prohibited decoders.

The Committee notes that nothing in this bill is intended to impede the development and deployment of scanning receivers designed as an integral part of a licensed wireless communications station or wireless communications system, or designed as communications test equipment not available to the general public.

Section 5(b) amends and replaces section 302(d)(2) of the Communications Act of 1934 with a new provision providing the Commission with the authority to prescribe rules to enhance the privacy of users of frequencies shared by commercial services and the public safety community. Section 5(b) also adds a new paragraph 302(d)(3) that requires that the Commission consider a requirement that scanning receivers be manufactured in a manner that prevents any tampering or alteration by the user that permits the device to be used unlawfully for interception or divulgence of radio communications. By including this provision, the Committee intends that the order adopting the regulations reflect on the record a discussion of possible means for manufacturers to prevent tampering or alteration of scanners for such illegal use. Section 302(d)(4) requires the Commission to consider requiring scanning manufacturers to include warning labels on scanners notifying users of prohibited uses. Likewise, the Committee intends that the order adopting the regulations reflect on the record a discussion of the benefits of warning labels. Section 302(d)(5) adds a definition of "protected" to the statute to be used in conjunction with the amendments made by this bill to paragraph 302(d)(1).

Section 5(b) recognizes that some frequencies available for commercial mobile services are shared with public safety and other private wireless users. Again, nothing in this legislation is intended to impede the development and deployment of scanning receivers designed as an integral part of a licensed wireless communications

station or wireless communications system, or designed as communications test equipment not available to the general public.

Section 5(c) directs the Commission to revise its rules, within 90 days, to implement the changes made by section 5. For purposes of subsection 5(b) and the implementing regulations required by subsection 5(c), the Committee expects that the Commission will provide an effective date to the regulations that will provide an adequate transition period for scanner manufacturers to comply, so that scanner manufacturers or distributors are able to sell their current inventory. Therefore, the Committee expects the Commission consider the record of the rulemaking required by section 5, a discussion of the manufacturers' normal product development and production cycles, in determining effective dates for the relevant requirements within the regulations, while also considering the overall purpose of the bill to increase the privacy of wireless users. Further, the Committee expects the Commission to promulgate regulations under section 5(d)(2) which ensure that any privacy enhancement measures resulting from such regulations do not interfere with or impede the otherwise proper use of radio scanners for reception of public safety and other allowed frequencies under law.

Sec. 6. Unauthorized interception or publication of communications

Section 6(a) makes amendments to section 705 of the Communications Act of 1934. Paragraph (1) alters the heading provided to section 705. Paragraph (2) strikes "except as authorized by chapter 119, title 18, United States Code" from the first sentence of section 705(a) of the Communications Act. This is later addressed by paragraph (4).

Paragraph (3) eliminates the requirement that a violation of section 705(a) consist of both interception and divulgence. The bill separates this provision into intentional interception or divulgence and, thus, the intentional interception itself is illegal. Similarly, intentional divulgence alone—divulging the contents of a radio communication knowing that it was intercepted without the sender's authorization—is also illegal. Intentional divulgence is actionable under this paragraph whether or not the party divulging the communication was the same party that intercepted the communication.

Paragraph (4) preserves the authorization for certain interceptions or disclosures provided in chapter 119 of title 18, United States Code. That chapter governs wire and electronic communications interception and interception of oral communications. Section 2511 of that chapter provides a number of exceptions to the chapter's prohibitions on interception. The majority of these exceptions relate to government interception. However, section 2511(g) provides a number of broad exceptions for the interception by private parties of radio communications, including those that are transmitted: (a) over a system that is configured for ready access by the general public; (b) by any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress; (c) by any governmental, law enforcement, civil defense, private land mobile, or public safety communications system that is readily accessible to the general public; (d) by a station operating in the ama-

teur, citizens band (CB); and, (e) by any marine or aeronautical communications system.

Because the Committee preserved the chapter 119 exceptions in its amendment of section 705(a) of the Communications Act, the Committee does not intend for the Commission or any other enforcement agency to investigate or fine parties for the interceptions authorized by chapter 119. Therefore, the Committee does not intend for uses of scanning receivers and receiving radios such as short-wave radios, that are consistent with the section 2511(g) exceptions to be investigated or fined under section 705(a).

Paragraph (5) increases the penalties for violating section 705(a) to be consistent with those under ECPA, relating to the interception or divulgence prohibition. Currently, the fine for willful violation is $2,000, 6 months in jail, or both; under ECPA, the penalties can be increased based upon repeated violations. This paragraph (5), therefore, provides an additional penalty option.

Paragraphs (6) and (7) make appropriate changes to sections 705(e)(3) and (4) of the Communications Act to conform to the changes made by paragraph 6(a)(3) of the bill.

Paragraph (8) adds a new section 705(e)(7) of the Communications Act of 1934 which requires the FCC to investigate and take action, notwithstanding any other investigations by other agencies or departments, on possible violations of the Communications Act or Commission rules on wireless communications privacy. With respect to the responsibility for enforcement under this paragraph, the Committee does not intend to preclude the Department of Justice or the Federal Bureau of Investigation from initiating and conducting separate or parallel investigations of allegations of violations of chapter 119 of title 18 of the United States Code.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934

* * * * * * *

TITLE III—PROVISIONS RELATING TO RADIO

PART I—GENERAL PROVISIONS

* * * * * * *

SEC. 302. DEVICES WHICH INTERFERE WITH RADIO RECEPTION.

(a) * * *

(b) No person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section*, or modify any such device, equipment, or system in*

any manner that causes such device, equipment, or system to fail to comply with such regulations.

* * * * * * *

[(d)(1) Within 180 days after the date of enactment of this subsection, the Commission shall prescribe and make effective regulations denying equipment authorization (under part 15 of title 47, Code of Federal Regulations, or any other part of that title) for any scanning receiver that is capable of—

[(A) receiving transmissions in the frequencies allocated to the domestic cellular radio telecommunications service,

[(B) readily being altered by the user to receive transmissions in such frequencies, or

[(C) being equipped with decoders that convert digital cellular transmissions to analog voice audio.

[(2) Beginning 1 year after the effective date of the regulations adopted pursuant to paragraph (1), no receiver having the capabilities described in subparagraph (A), (B), or (C) of paragraph (1), as such capabilities are defined in such regulations, shall be manufactured in the United States or imported for use in the United States.]

(d) EQUIPMENT AUTHORIZATION REGULATIONS.—

(1) PRIVACY PROTECTIONS REQUIRED.—The Commission shall prescribe regulations, and review and revise such regulations as necessary in response to subsequent changes in technology or behavior, denying equipment authorization (under part 15 of title 47, Code of Federal Regulations, or any other part of that title) for any scanning receiver that is capable of—

(A) receiving transmissions in the frequencies that are allocated to the domestic cellular radio telecommunications service or the personal communications service;

(B) readily being altered to receive transmissions in such frequencies;

(C) being equipped with decoders that—

(i) convert digital domestic cellular radio telecommunications service, personal communications service, or protected specialized mobile radio service transmissions to analog voice audio; or

(ii) convert protected paging service transmissions to alphanumeric text; or

(D) being equipped with devices that otherwise decode encrypted radio transmissions for the purposes of unauthorized interception.

(2) PRIVACY PROTECTIONS FOR SHARED FREQUENCIES.—The Commission shall, with respect to scanning receivers capable of receiving transmissions in frequencies that are used by commercial mobile services and that are shared by public safety users, examine methods, and may prescribe such regulations as may be necessary, to enhance the privacy of users of such frequencies.

(3) TAMPERING PREVENTION.—In prescribing regulations pursuant to paragraph (1), the Commission shall consider defining "capable of readily being altered" to require scanning receivers to be manufactured in a manner that effectively precludes alteration of equipment features and functions as necessary to pre-

vent commerce in devices that may be used unlawfully to intercept or divulge radio communication.

(4) WARNING LABELS.—In prescribing regulations under paragraph (1), the Commission shall consider requiring labels on scanning receivers warning of the prohibitions in Federal law on intentionally intercepting or divulging radio communications.

(5) DEFINITIONS.—As used in this subsection, the term "protected" means secured by an electronic method that is not published or disclosed except to authorized users, as further defined by Commission regulation.

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TITLE VII—MISCELLANEOUS PROVISIONS

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SEC. 705. UNAUTHORIZED *INTERCEPTION OR* PUBLICATION OF COMMUNICATIONS.

(a) **[**Except as authorized by chapter 119, title 18, United States Code, no person**]** *No person* receiving, assisting in receiving, transmitting, or assisting in transmitting, any interstate or foreign communication by wire or radio shall divulge or publish the existence, contents, substance, purport, effect, or meaning thereof, except through authorized channels of transmission or reception, (1) to any person other than the addressee, his agent, or attorney, (2) to a person employed or authorized to forward such communication to its destination, (3) to proper accounting or distributing officers of the various communicating centers over which the communication may be passed, (4) to the master of a ship under whom he is serving, (5) in response to a subpena issued by a court of competent jurisdiction, or (6) on demand of other lawful authority. No person not being authorized by the sender shall *intentionally* intercept any radio **[**communication and divulge**]** *communication, and no person having intercepted such a communication shall intentionally divulge* or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person. No person not being entitled thereto shall receive or assist in receiving any interstate or foreign communication by radio and use such communication (or any information therein contained) for his own benefit or for the benefit of another not entitled thereto. No person having received any intercepted radio communication or having become acquainted with the contents, substance, purport, effect, or meaning of such communication (or any part thereof) knowing that such communication was intercepted, shall *(A)* divulge or publish the existence, contents, substance, purport, effect, or meaning of such communication (or any part **[**thereof) or**]** *thereof); or (B)* use such communication (or any information therein contained) for his own benefit or for the benefit of another not entitled thereto. **[**This section shall not apply to the receiving, divulging, publishing, or utilizing the contents of any radio communication which is transmitted by any station for the use of the general public, which relates to ships, aircraft, vehicles, or persons in distress, or which is

transmitted by an amateur radio station operator or by a citizens band radio operator.] *Nothing in this subsection prohibits an interception or disclosure of a communication as authorized by chapter 119 of title 18, United States Code.*

* * * * * * *

(e)(1) Any person who willfully violates subsection (a) shall be [fined not more than $2,000 or] imprisoned for not more than 6 months, *or fined under title 18, United States Code,* or both.

* * * * * * *

(3)(A) Any person aggrieved by [any violation] *any receipt, interception, divulgence, publication, or utilization of any communication in violation* of subsection (a) or paragraph (4) of this subsection may bring a civil action in a United States district court or in any other court of competent jurisdiction.

* * * * * * *

(4) Any person who manufactures, assembles, modifies, imports, exports, sells, or distributes any electronic, mechanical, or other device or equipment, knowing or having reason to know that the device or equipment is primarily of assistance in the unauthorized decryption of satellite cable programming, or direct-to-home satellite services, or is intended for [any other activity prohibited by subsection (a)] *any receipt, interception, divulgence, publication, or utilization of any communication in violation of subsection (a)*, shall be fined not more than $500,000 for each violation, or imprisoned for not more than 5 years for each violation, or both. For purposes of all penalties and remedies established for violations of this paragraph, the prohibited activity established herein as it applies to each such device shall be deemed a separate violation.

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(7) Notwithstanding any other investigative or enforcement activities of any other Federal agency, the Commission shall investigate alleged violations of this section and may proceed to initiate action under section 503 of this Act to impose forfeiture penalties with respect to such violation upon conclusion of the Commission's investigation.

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TITLE VIII—STATE AND LOCAL TREATMENT OF CHARGES FOR MOBILE TELECOMMUNICATIONS SERVICES

SEC. 801. APPLICATION OF TITLE.

(a) IN GENERAL.—This title applies to any tax, charge, or fee levied by a taxing jurisdiction as a fixed charge for each customer or measured by gross amounts charged to customers for mobile telecommunications services, regardless of whether such tax, charge, or fee is imposed on the vendor or customer of the service and regardless of the terminology used to describe the tax, charge, or fee.

(b) GENERAL EXCEPTIONS.—This title does not apply to—

(1) any tax, charge, or fee levied upon or measured by the net income, capital stock, net worth, or property value of the provider of mobile telecommunications service;

(2) any tax, charge, or fee that is applied to an equitably apportioned amount that is not determined on a transactional basis;

(3) any tax, charge, or fee that represents compensation for a mobile telecommunications service provider's use of public rights of way or other public property, provided that such tax, charge, or fee is not levied by the taxing jurisdiction as a fixed charge for each customer or measured by gross amounts charged to customers for mobile telecommunication services;

(4) any generally applicable business and occupation tax that is imposed by a State, is applied to gross receipts or gross proceeds, is the legal liability of the carrier, and statutorily allows the taxpayer to elect to use the sourcing method required in this Act; or

(5) any fee related to obligations under section 254 of this Act.".

(c) SPECIFIC EXCEPTIONS.—This title—

(1) does not apply to the determination of the taxing situs of prepaid telephone calling services;

(2) does not affect the taxability of either the initial sale of mobile telecommunications services or subsequent resale, whether as sales of the service alone or as a part of a bundled product, where the Internet Tax Freedom Act would preclude a taxing jurisdiction from subjecting the charges of the sale of these mobile telecommunications services to a tax, charge, or fee but this section provides no evidence of the intent of Congress with respect to the applicability of the Internet Tax Freedom Act to such charges; and

(3) does not apply to the determination of the taxing situs of air-ground radiotelephone service as defined in section 22.99 of the Commission's regulations (47 C.F.R. 22.99).

SEC. 802. SOURCING RULES.

(a) IN GENERAL.—Notwithstanding the law of any State or political subdivision thereof to the contrary, mobile telecommunications services provided in a taxing jurisdiction to a customer, the charges for which are billed by or for the customer's home service provider, shall be deemed to be provided by the customer's home service provider.

(b) JURISDICTION.—All charges for mobile telecommunications services that are deemed to be provided by the customer's home service provider under this title are authorized to be subjected to tax, charge, or fee by the taxing jurisdictions whose territorial limits encompass the customer's place of primary use, regardless of where the mobile telecommunication services originate, terminate or pass through, and no other taxing jurisdiction may impose taxes, charges, or fees on charges for such mobile telecommunications services.

SEC. 803. LIMITATIONS.

This title does not—

(1) provide authority to a taxing jurisdiction to impose a tax, charge, or fee that the laws of the jurisdiction do not authorize the jurisdiction to impose; or

(2) modify, impair, supersede, or authorize the modification, impairment, or supersession of, the law of any taxing jurisdiction pertaining to taxation except as expressly provided in this title.

SEC. 804. ELECTRONIC DATABASES FOR NATIONWIDE STANDARD NUMERIC JURISDICTIONAL CODES.

(a) ELECTRONIC DATABASE.—A State may provide an electronic database to a home service provider or, if a State does not provide such an electronic database to home service providers, then the designated database provider may provide an electronic database to a home service provider. The electronic database, whether provided by the State or the designated database provider, shall be provided in a format approved by the American National Standards Institute's Accredited Standards Committee X12, that, allowing for de minimis deviations, designates for each street address in the State, including to the extent practicable, any multiple postal street addresses applicable to one street location, the appropriate taxing jurisdictions, and the appropriate code for each taxing jurisdiction, for each level of taxing jurisdiction, identified by one nationwide standard numeric code. The electronic database shall also provide the appropriate code for each street address with respect to political subdivisions which are not taxing jurisdictions when reasonably needed to determine the proper taxing jurisdiction. The nationwide standard numeric codes shall contain the same number of numeric digits with each digit or combination of digits referring to the same level of taxing jurisdiction throughout the United States using a format similar to FIPS 55–3 or other appropriate standard approved by the Federation of Tax Administrators and the Multistate Tax Commission, or their successors. Each address shall be provided in standard postal format.

(b) NOTICE; UPDATES.—A State or designated database provider that provides or maintains an electronic database described in subsection (a) shall provide notice of the availability of the then current electronic database, and any subsequent revisions thereof, by publication in the manner normally employed for the publication of informational tax, charge, or fee notices to taxpayers in that State.

(c) USER HELD HARMLESS.—A home service provider using the data contained in the electronic database described in subsection (a) shall be held harmless from any tax, charge, or fee liability that otherwise would be due solely as a result of any error or omission in the electronic database provided by a State or designated database provider. The home service provider shall reflect changes made to the electronic database during a calendar quarter no later than 30 days after the end of that calendar quarter for each State that issues notice of the availability of an electronic database reflecting such changes under subsection (b).

SEC. 805. PROCEDURE WHERE NO ELECTRONIC DATABASE PROVIDED.

(a) IN GENERAL.—If neither a State nor designated database provider provides an electronic database under section 804, a home service provider shall be held harmless from any tax, charge, or fee liability in that State that otherwise would be due solely as a result

of an assignment of a street address to an incorrect taxing jurisdiction if, subject to section 806, the home service provider employs an enhanced zip code to assign each street address to a specific taxing jurisdiction for each level of taxing jurisdiction and exercises due diligence at each level of taxing jurisdiction to ensure that each such street address is assigned to the correct taxing jurisdiction. Where an enhanced zip code overlaps boundaries of taxing jurisdictions of the same level, the home service provider must designate one specific jurisdiction within such enhanced zip code for use in taxing the activity for that enhanced zip code for each level of taxing jurisdiction. Any enhanced zip code assignment changed in accordance with section 806 is deemed to be in compliance with this section. For purposes of this section, there is a rebuttable presumption that a home service provider has exercised due diligence if such home service provider demonstrates that it has—

(1) expended reasonable resources to implement and maintain an appropriately detailed electronic database of street address assignments to taxing jurisdictions;

(2) implemented and maintained reasonable internal controls to promptly correct misassignments of street addresses to taxing jurisdictions; and

(3) used all reasonably obtainable and usable data pertaining to municipal annexations, incorporations, reorganizations and any other changes in jurisdictional boundaries that materially affect the accuracy of the electronic database.

(b) TERMINATION OF SAFE HARBOR.—Subsection (a) applies to a home service provider that is in compliance with the requirements of subsection (a), with respect to a State for which an electronic database is not provided under section 804 until the later of—

(1) 18 months after the nationwide standard numeric code described in section 804(a) has been approved by the Federation of Tax Administrators and the Multistate Tax Commission; or

(2) 6 months after that State or a designated database provider in that State provides the electronic database as prescribed in section 804(a).

SEC. 806. CORRECTION OF ERRONEOUS DATA FOR PLACE OF PRIMARY USE.

(a) IN GENERAL.—A taxing jurisdiction, or a State on behalf of any taxing jurisdiction or taxing jurisdictions within such State, may—

(1) determine that the address used for purposes of determining the taxing jurisdictions to which taxes, charges, or fees for mobile telecommunications services are remitted does not meet the definition of place of primary use in section 809(3) and give binding notice to the home service provider to change the place of primary use on a prospective basis from the date of notice of determination if—

(A) where the taxing jurisdiction making such determination is not a State, such taxing jurisdiction obtains the consent of all affected taxing jurisdictions within the State before giving such notice of determination; and

(B) the customer is given an opportunity, prior to such notice of determination, to demonstrate in accordance with applicable State or local tax, charge, or fee administrative

procedures that the address is the customer's place of primary use;

(2) determine that the assignment of a taxing jurisdiction by a home service provider under section 805 does not reflect the correct taxing jurisdiction and give binding notice to the home service provider to change the assignment on a prospective basis from the date of notice of determination if—

(A) where the taxing jurisdiction making such determination is not a State, such taxing jurisdiction obtains the consent of all affected taxing jurisdictions within the State before giving such notice of determination; and

(B) the home service provider is given an opportunity to demonstrate in accordance with applicable State or local tax, charge, or fee administrative procedures that the assignment reflects the correct taxing jurisdiction.

SEC. 807. DUTY OF HOME SERVICE PROVIDER REGARDING PLACE OF PRIMARY USE.

(a) PLACE OF PRIMARY USE.—A home service provider is responsible for obtaining and maintaining the customer's place of primary use (as defined in section 809). Subject to section 806, and if the home service provider's reliance on information provided by its customer is in good faith, a home service provider—

(1) may rely on the applicable residential or business street address supplied by the home service provider's customer; and

(2) is not liable for any additional taxes, charges, or fees based on a different determination of the place of primary use for taxes, charges or fees that are customarily passed on to the customer as a separate itemized charge.

(b) ADDRESS UNDER EXISTING AGREEMENTS.—Except as provided in section 806, a home service provider may treat the address used by the home service provider for tax purposes for any customer under a service contract or agreement in effect 2 years after the date of enactment of the Wireless Telecommunications Sourcing and Privacy Act as that customer's place of primary use for the remaining term of such service contract or agreement, excluding any extension or renewal of such service contract or agreement, for purposes of determining the taxing jurisdictions to which taxes, charges, or fees on charges for mobile telecommunications services are remitted.

SEC. 808. SCOPE; SPECIAL RULES.

(a) TITLE DOES NOT SUPERSEDE CUSTOMER'S LIABILITY TO TAXING JURISDICTION.—Nothing in this title modifies, impairs, supersedes, or authorizes the modification, impairment, or supersession of, any law allowing a taxing jurisdiction to collect a tax, charge, or fee from a customer that has failed to provide its place of primary use.

(b) ADDITIONAL TAXABLE CHARGES.—If a taxing jurisdiction does not otherwise subject charges for mobile telecommunications services to taxation and if these charges are aggregated with and not separately stated from charges that are subject to taxation, then the charges for otherwise non-taxable mobile telecommunications services may be subject to taxation unless the home service provider can reasonably identify charges not subject to such tax, charge, or fee from its books and records that are kept in the regular course of business.

(c) NON-TAXABLE CHARGES.—If a taxing jurisdiction does not subject charges for mobile telecommunications services to taxation, a customer may not rely upon the nontaxability of charges for mobile telecommunications services unless the customer's home service provider separately states the charges for non-taxable mobile telecommunications services from taxable charges or the home service provider elects, after receiving a written request from the customer in the form required by the provider, to provide verifiable data based upon the home service provider's books and records that are kept in the regular course of business that reasonably identifies the nontaxable charges.

(d) REFERENCES TO REGULATIONS.—Any reference in this title to the Commission's regulations is a reference to those regulations as they were in effect on June 1, 1999.

SEC. 809. DEFINITIONS.

In this title:

(1) CHARGES FOR MOBILE TELECOMMUNICATIONS SERVICES.—The term "charges for mobile telecommunications services" means any charge for, or associated with, the provision of commercial mobile radio service, as defined in section 20.3 of the Commission's regulations (47 C.F.R. 20.3), or any charge for, or associated with, a service provided as an adjunct to a commercial mobile radio service, that is billed to the customer by or for the customer's home service provider regardless of whether individual transmissions originate or terminate within the licensed service area of the home service provider.

(2) TAXING JURISDICTION.—The term "taxing jurisdiction" means any of the several States, the District of Columbia, or any territory or possession of the United States, any municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or any other political subdivision within the territorial limits of the United States with the authority to impose a tax, charge, or fee.

(3) PLACE OF PRIMARY USE.—The term "place of primary use" means the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be—

(A) either the residential street address or the primary business street address of the customer; and

(B) within the licensed service area of the home service provider.

(4) LICENSED SERVICE AREA.—The term "licensed service area" means the geographic area in which the home service provider is authorized by law or contract to provide commercial mobile radio service to the customer.

(5) HOME SERVICE PROVIDER.—The term "home service provider" means the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services.

(6) CUSTOMER.—

(A) IN GENERAL.—The term "customer" means—

(i) the person or entity that contracts with the home service provider for mobile telecommunications services; or

(ii) where the end user of mobile telecommunications services is not the contracting party, the end user of the mobile telecommunications service, but this clause applies only for the purpose of determining the place of primary use.

(B) The term "customer" does not include—

(i) a reseller of mobile telecommunications service; or

(ii) a serving carrier under an arrangement to serve the customer outside the home service provider's licensed service area.

(7) DESIGNATED DATABASE PROVIDER.—The term designated database provider" means a corporation, association, or other entity representing all the political subdivisions of a State that is—

(A) responsible for providing the electronic database prescribed in section 804(a) if the State has not provided such electronic database; and

(B) sanctioned by municipal and county associations or leagues of the State whose responsibility it would otherwise be to provide the electronic database prescribed by this title.

(8) PREPAID TELEPHONE CALLING SERVICES.—The term "prepaid telephone calling service" means the right to purchase exclusively telecommunications services that must be paid for in advance, that enables the origination of calls using an access number, authorization code, or both, whether manually or electronically dialed, if the remaining amount of units of service that have been prepaid is known by the provider of the prepaid service on a continuous basis.

(9) RESELLER.—The term "reseller"—

(A) means a provider who purchases telecommunications services from another telecommunications service provider and then resells, uses as a component part of, or integrates the purchased services into a mobile telecommunications service; but

(B) does not include a serving carrier with which a home service provider arranges for the services to its customers outside the home service provider's licensed service area.

(10) SERVING CARRIER.—The term "serving carrier" means a facilities-based carrier providing mobile telecommunications service to a customer outside a home service provider's or reseller's licensed service area.

(11) MOBILE TELECOMMUNICATIONS SERVICE.—The term "mobile telecommunications service" means commercial mobile radio service, as defined in section 20.3 of the Commission's regulations (47 C.F.R. 20.3).

(12) ENHANCED ZIP CODE.—The term "enhanced zip code" means a United States postal zip code of 9 or more digits.

SEC. 810. COMMISSION NOT TO HAVE JURISDICTION OF TITLE.

Notwithstanding any other provision of this Act, the Commission shall have no jurisdiction over the interpretation, implementation, or enforcement of this title.

SEC. 811. NONSEVERABILITY.

If a court of competent jurisdiction enters a final judgment on the merits that is no longer subject to appeal, which substantially limits

or impairs the essential elements of this title based on Federal statutory or Federal Constitutional grounds, or which determines that this title violates the United States Constitution, then the provisions of this title are null and void and of no effect.

SEC. 812. NO INFERENCE.

(a) INTERNET TAX FREEDOM ACT.—Nothing in this title may be construed as bearing on Congressional intent in enacting the Internet Tax Freedom Act or as affecting that Act in any way.

(b) TELECOMMUNICATIONS ACT OF 1996.—Nothing in this title shall limit or otherwise affect the implementation of the Telecommunications Act of 1996 or the amendments made by that Act.

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